

No. 22-3424

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Oct 5, 2022

DEBORAH S. HUNT, Clerk

VINCENT JOHNSON,

Petitioner-Appellant,

v.

TIM SHOOP, WARDEN,

Respondent-Appellee.

ORDER

BEFORE: BOGGS, THAPAR, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

APPX. A



Deborah S. Hunt, Clerk

*Judge Murphy recused himself from participation in this ruling.

denial of a certificate of appealability, which was not appealable. *See Sims v. United States*, 244 F.3d 509, 509 (6th Cir. 2001) (order). Accordingly, we dismissed that appeal. *Johnson v. Shoop*, No. 21-3213 (6th Cir. Apr. 5, 2021).

¶ In January 2022, Johnson filed another Rule 60(d) motion, styled as an independent action, asking to set aside this court's order in No. 16-4076, which denied his first request for a certificate of appealability. He also filed a motion to have that independent action transferred to this court. He filed corresponding motions seeking to proceed in forma pauperis (IFP) and for certificates of appealability. The district court explained that, in sum, Johnson's six motions sought to have the district court "transfer the re-opened, but 'independent,' case to the Sixth Circuit, along with a certificate of appealability and grant of leave to proceed IFP." The district court denied the six motions in a single order, explaining that they raised no new claims and that the district court had no authority to alter the prior decision of this court.

¶ Johnson has filed a notice of appeal from the district court's order. To the extent that he seeks to appeal the denial of his Rule 60(d) motion, which—as before—essentially seeks review of the denial of a certificate of appealability, the denial of the Rule 60(d) motion is not appealable. *See Sims*, 244 F.3d at 509. Nor may Johnson appeal the district court's denial of his two applications for certificates of appealability. *See id.*

¶ Likewise, Johnson may not appeal the district court's denial of his motions to proceed in forma pauperis. Although an order denying in forma pauperis status is a permissible interlocutory appeal, *Roberts v. U.S. Dist. Ct.*, 339 U.S. 844, 845 (1950) (per curiam), Johnson's motions sought to proceed IFP *in this court* in conjunction with the transfer of his independent Rule 60(d) motion. An order denying leave to appeal IFP is not a final appealable order; rather, the proper avenue for review of such an order is by motion on appeal. *See Fed. R. App. P. 24(a)(5)*, Advisory Committee's Note to 1967 amendment (stating that the rule concerning in forma pauperis appeal "establishes a subsequent motion in the court of appeals, rather than an appeal . . . as the proper procedure for calling in question the correctness of the action of the district court").

¶ Finally, although the district court's denial of Johnson's motion to transfer his Rule 60(d) independent action to this court is technically appealable, there's no process this court may use to

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redress his claimed injury. Even if we were to transfer the Rule 60(d) motion to this court, there's nothing we can do on the merits of his claim. Johnson has applied for and been denied a certificate of appealability from this court to appeal the underlying judgment denying his habeas corpus petition. We have also denied his petition for rehearing of that denial. Because there is no further procedural mechanism under the Federal Rules of Appellate Procedure for this court to reconsider its previous denial of a certificate of appealability, this court would be unable to entertain his "independent" Rule 60(d) action. As a result, Johnson's alleged injury cannot be redressed by a favorable decision.

For the foregoing reasons, it is ordered that appeal No. 22-3424 is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vincent Johnson,

Petitioner,

v.

Warden, Chillicothe Correctional Institution,

Respondent.

Case No: 2:15-cv-971

Judge Graham

Magistrate Judge Deavers

Opinion and Order

Petitioner Vincent Johnson, a state prisoner, originally brought this action for a writ of habeas corpus, 29 U.S.C. § 2254, in March 2015. He challenged his convictions for rape, attempted rape, kidnapping, abduction, and domestic violence on two grounds. First, he asserted that the trial court abused its discretion by permitting admission of DNA evidence, and that he thereby was denied due process and equal protection. Second, he asserted that he was denied his right to grand jury findings due to an improper amendment of the indictment.

This Court dismissed the petition and denied motions for a certificate of appealability and leave to proceed on appeal in forma pauperis. Docs. 18, 22, 24. The Court of Appeals likewise denied petitioner's application for a certificate of appealability and his IFP motions. Doc. 25. The United State Supreme Court denied his petition for writ of certiorari in November 2017. Doc. 29.

Petitioner continued to file various motions requesting relief. Those motions included a motion to set aside the judgment, a petition for writ of mandamus, a motion for reconsideration, a motion to reopen the appeal, and a motion for an order authorizing the filing of a second or successive habeas corpus petition. All of petitioner's motions were denied, as well as his corresponding applications for certificates of appealability, motions for leave to proceed IFP, and petitions for writ of certiorari. Docs. 27, 30, 32, 34, 38, 42, 44.

This matter is now before the Court on six motions which Petitioner has recently filed. He has filed a motion for the filing of an "independent action," a motion to transfer the independent action to the Sixth Circuit, motions for leave to proceed IFP, and applications for certificates of appealability.

The Court must deny all of petitioner's motions. The motions present no new claims, evidence or rules of constitutional law. As he has done before, petitioner "complains that the

United States Court of Appeals for the Sixth Circuit improperly denied his request for a certificate of appealability and has refused to reconsider that ruling.” Doc. 38 at PAGEID 1085. With the Sixth Circuit having dismissed his most recent appeal (on the grounds that an order denying a certificate of appealability is not appealable), petitioner now attempts to circumvent that ruling by asking this Court to authorize “the reopening and the setting aside” of the Sixth Circuit’s April 27, 2017 order denying petitioner’s application for certificate of appealability. Doc. 46 at PAGEID 1107–08. Petitioner would then have this Court transfer the re-opened, but “independent,” case to the Sixth Circuit, along with a certificate of appealability and grant of leave to proceed IFP.

As the Court has previously explained, “[t]his Court is without the authority to alter a decision of the United States Court of Appeals for the Sixth Circuit. . . . ‘[I]f [petitioner] claims that the Sixth Circuit erred in not issuing a certificate of appealability, he is making a claim beyond the reach of this Court unless and until the Sixth Circuit permits a second or successive motion to be filed.’” Doc. 38 at PAGEID 1086 (quoting *United States v. Cook*, No. 5:06-183-DCR, 2017 WL 2872369, at *3 (E.D. Ky. July 5, 2017)). The Court reaches the same conclusion it reached before: this Court has “no authority to reopen Petitioner’s prior appeal.” *Id.* at PAGEID 1087.

Accordingly, petitioner’s motions to file an independent action and to transfer the independent action to the Sixth Circuit (docs. 45, 46) are DENIED.

Reasonable jurists would not debate whether the Court’s denial of petitioner’s motions was proper. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Further, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith. Petitioner’s motions for a certificate of appealability (docs. 52, 53) and motions for leave to appeal in forma pauperis (docs. 47, 48) are thus DENIED.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: April 12, 2022

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: January 02, 2018

Mr. Vincent Johnson
Chillicothe Correctional Institution
P.O. Box 5500
Chillicothe, OH 45601

Re: Case No. 16-4076, *Vincent Johnson v. Charlotte Jenkins*
Originating Case No. : 2:15-cv-00971

Dear Mr. Johnson:

Please find enclosed, unfiled, your motion to reopen and set aside judgment Rule 60(b)(6). Please be advised that your case is closed, therefore, your documents will not be filed. No further correspondence will be forthcoming from this office. Type your text here.

Sincerely yours,

s/Leon T. Korotko
Case Manager
Direct Dial No. 513-564-7014

cc: Ms. Maura O'Neill Jaite

APPX. -D

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

TELEPHONE
(513) 564-7000

DEBORAH S. HUNT
CLERK

January 17, 2018

Vincent Johnson
#688089
Chillicothe Correctional Institution
P.O. Box 5500
Chillicothe, OH 45601

Re: 16-4076, *Johnson v. Jenkins*

Dear Mr. Johnson,

Your recent letter to Chief Judge Cole was forwarded to me for review and response. Judges of this court do not correspond with litigants regarding cases that are or were pending before the court.

In your letter, you ask about a Rule 60(b)(6) motion asking the court to reopen and set aside the judgment in your case. As you know, in your appeal here, the court denied a certificate of appealability. Your petition for en banc rehearing was circulated to the entire court, and after review, the court denied rehearing. This terminated your case because this appeal could not proceed without a certificate of appealability.

Your Rule 60(b) motion was twice returned to you because this court as an appellate court does not review Rule 60 motions; such motions are generally filed in the trial court with respect to trial court proceedings.

Sincerely,



Susan Rogers
Chief Deputy Clerk

APPX-E

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: September 23, 2020

Mr. Vincent Johnson
Chillicothe Correctional Institution
P.O. Box 5500
Chillicothe, OH 45601

Re: Case No. 16-4076, *Vincent Johnson v. Charlotte Jenkins*
Originating Case No: 2:15-cv-00971

Dear Mr. Johnson:

Enclosed please find, unfiled, your motion to reopen under Rule 60(d). Please be advised that this court does not entertain 60(d) motions. If you wish to seek permission to file a new habeas petition in the district court, please complete and return the enclosed form to this court.

Sincerely yours,

s/Patricia J. Elder
Senior Case Manager

cc: Ms. Maura O'Neill Jaite

Enclosure

APPX. --F